

**SUMMARY OF TESTIMONY OF VERNON MASAYESVA
EXECUTIVE DIRECTOR, BLACK MESA TRUST**

THANK YOU FOR THIS OPPORTUNITY TO SPEAK WITH YOU TODAY. I AM HERE TO ADDRESS THE FAILURE OF THE OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSM) TO FULFILL ITS TRUST RESPONSIBILITY TO THE HOPI AND NAVAJO PEOPLE LIVING ON AND NEAR BLACK MESA, ARIZONA. FOR MORE THAN TEN YEARS, OSM HAS ALLOWED THE PEABODY COAL COMPANY TO TAKE BILLIONS OF GALLONS OF PRISTINE GROUND WATER, AND BILLIONS OF GALLONS MORE OF SURFACE WATER FROM INDIAN LANDS WITHOUT CONDUCTING A COMPLETE AND OBJECTIVE ASSESSMENT OF THE ENVIRONMENTAL AND CULTURAL IMPACTS OF SUCH A LOSS.

OSM'S FAILURE IS ALL THE MORE INEXCUSABLE BECAUSE WATER IS SO SCARCE IN THE HIGH DESERT OF NORTHEASTERN ARIZONA, AND ALL THE MORE HARMFUL BECAUSE WATER IS SO SACRED TO THE INDIAN PEOPLE OF BLACK MESA. OSM'S IRRESPONSIBILITY HAS LEFT THE LIVELIHOOD AND THE WAY OF LIFE OF INDIAN PEOPLE SERIOUSLY THREATENED. OSM HAS ALSO FAILED TO COMMUNICATE EFFECTIVELY WITH THE INDIAN PEOPLE WHOSE INTERESTS IT IS OBLIGATED TO PROTECT.

A DISCUSSION OF HOW OSM HAS RESPONDED TO THE CONCERNS OF INDIAN PEOPLE ABOUT THE LOSS OF WATER ON BLACK MESA -- OR MORE ACCURATELY PUT, HOW OSM HAS FAILED TO RESPOND TO THOSE CONCERNS -- SHOULD BEGIN WITH SOME UNDERSTANDING OF HOW MUCH WATER MEANS TO THE INDIAN PEOPLE LIVING THERE. ONLY WITH THIS UNDERSTANDING CAN ONE BEGIN TO APPRECIATE THE DEPTH OF THE WOUNDS OSM'S ACTIONS AND INACTION HAVE INFLICTED.

FOR CENTURIES THE LAND AND WATER OF BLACK MESA HAVE BEEN CENTRAL TO THE CULTURE AND RELIGION AS WELL AS THE LIVELIHOOD OF THE INDIAN PEOPLE LIVING THERE. IN THE HOPI VIEW OF LIFE, THE LAND AND WATER AND THE CROPS THEY YIELD -- IN PARTICULAR, CORN -- IN FACT, ALL PLANTS, ANIMALS AND HUMAN BEINGS, EXIST IN A DELICATE NATURAL AND SPIRITUAL BALANCE. HOPI PEOPLE BELIEVE THAT THE EARTH ITSELF IS ALIVE; THAT WATER IS THE EARTH'S LIFE BLOOD, AND THAT LIFE ON EARTH COMES FROM AND

RETURNS TO WATER. HOPI PEOPLE BELIEVE THAT THEY CAME TO THIS WORLD FROM "THE WATER WORLD". THEY WERE GIVEN THREE THINGS BY A DEITY, MA'SAW, WITH WHICH TO LIVE: CORN SEEDS, A PLANTING STICK AND A GOURD OF WATER. WITH THESE SIMPLE TOOLS, THE HOPI PEOPLE ENTERED INTO A COVENANT WITH MA'SAW TO LIVE A SIMPLE LIFE OF REVERENCE AND RESPECT FOR THE LAND; THEY WERE TO BE STEWARDS OF THE LAND IN LIVING A SUSTAINABLE LIFE. THUS, HOPI PEOPLE NOT ONLY DRINK AND BATHE IN THE PRISTINE WATER OF THE NAVAJO AQUIFER, IT IS SACRED TO THEM; IT IS USED TO WORSHIP AND TO WATER CORN, WHICH IS ALSO SACRED TO THE HOPI. CORN MEAL IS NOT ONLY A STAPLE FOR THE HOPI, IT HAS SUCH SPIRITUAL MEANING THAT IT IS THE FIRST THING THAT TOUCHES A NEWBORN BABY'S LIPS AND IT IS THE BED ON WHICH THE BODIES OF THOSE WHO HAVE DIED ARE LAID, FOR THEIR JOURNEY BACK TO THE WATER WORLD FROM WHICH ALL LIFE ON EARTH HAS SPRUNG.

AS IMPORTANT AS THE PRISTINE WATER OF THE NAVAJO AQUIFER IS TO THE INDIAN PEOPLE OF BLACK MESA, IT IS BY NO MEANS THE ONLY CULTURAL AND ENVIRONMENTAL CONCERN THEY HAVE ABOUT THE OPERATION OF THE BLACK MESA MINE. THE HOPI AND NAVAJO HAVE A NUMBER OF CONCERNS THAT WERE SET FORTH IN DETAIL IN THE COMMENTS SUBMITTED TO OSM BY THE BLACK MESA TRUST ON APRIL 29 OF THIS YEAR. (COPIES OF THOSE COMMENTS HAVE BEEN PROVIDED TO MEMBERS OF THE COMMITTEE.) AMONG THOSE CONCERNS IS THE WITHHOLDING OF 250,000,000 (MILLION) GALLONS OF SURFACE WATER EACH YEAR IN THE 200 IMPOUNDMENTS OR DAMS CONSTRUCTED BY THE PEABODY COAL COMPANY. THE LOSS OF SURFACE WATER WAS ADDRESSED BY MY FRIEND, LEONARD SELESTEWA, DURING A HEARING HELD BEFORE THIS COMMITTEE ON JUNE 4.

OSM HAS NEVER BEEN SHORT OF WORDS IN PROCLAIMING A COMMITMENT TO PROTECT THE INTERESTS OF INDIAN PEOPLES. IN A DIRECTIVE ISSUED ON March 28, 1996, OSM DESCRIBES IN GREAT DETAIL ITS TRUST RESPONSIBILITY TO INDIAN PEOPLE. See Dept. of Interior, Office of Surface Mining Reclamation and Enforcement Directive System, 18 Reg. 1 (March 28, 1996). OSM'S DIRECTIVE RECOGNIZES THAT THE UNITED STATES "HAS CHARGED ITSELF WITH MORAL OBLIGATIONS OF THE HIGHEST RESPONSIBILITY AND TRUST." "AT A MINIMUM," OSM GOES ON TO SAY, "IT IS A LEGALLY ENFORCEABLE FIDUCIARY OBLIGATION ON THE PART OF THE UNITED STATES TO PROTECT TRIBAL LANDS, ASSETS, RESOURCES AND TREATY RIGHTS, AS WELL AS A DUTY TO CARRY OUT THE MANDATES OF FEDERAL LAW WITH RESPECT TO AMERICAN INDIANS AND ALASKA

NATIVE TRIBES." *Id.* at 2. "AS THE REGULATORY AUTHORITY FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS LOCATED ON INDIAN LANDS AND AS A FEDERAL AGENCY OF THE DEPARTMENT OF THE INTERIOR," OSM ACKNOWLEDGES ITS RESPONSIBILITY TO "ENSURE THAT THE LANDS AND TRUST RESOURCES OF FEDERALLY RECOGNIZED INDIAN TRIBES AND THEIR FAMILY MEMBERS THAT MAY BE AFFECTED BY ADMINISTRATIVE AND REGULATORY ACTIONS ARE IDENTIFIED, CONSERVED AND PROTECTED." *Id.* at 3.

UNFORTUNATELY, OSM'S ACTIONS HAVE NOT LIVED UP TO ITS RHETORIC. AT NO TIME IN MORE THAN TEN YEARS HAS OSM CONDUCTED A FULL AND FAIR ASSESSMENT OF THE CULTURAL AND ENVIRONMENTAL IMPACTS OF THE BLACK MESA MINE. TO BEGIN WITH, OSM HAS NOT APPROACHED AN IMPACT ASSESSMENT USING THE VALUES AND CULTURAL PERSPECTIVE OF THE PEOPLE IT CLAIMS TO PROTECT, BUT RATHER FROM THE UTILITARIAN PERSPECTIVE OF THE COMPANY IT IS SUPPOSED TO REGULATE.

FOR EXAMPLE, OSM DOES NOT VIEW GROUNDWATER AND SURFACE WATER AS PARTS OF THE INTEGRATED WHOLE OF A LIVING EARTH; IT SEES WATER CONTAINED IN A SEPARATE, INANIMATE COMPARTMENT. OSM DOES NOT VIEW WATER DRAWN FROM THE NAVAJO AQUIFER AS SACRED, BUT AS A COMMODITY WHOSE VALUE LIES IN ITS UTILITY. CONSEQUENTLY, OSM DOES NOT SEE THAT THE DRAWDOWN OF THE N-AQUIFER AT THE BLACK MESA MINE SITE HAS PROFOUND RELIGIOUS AND CULTURAL IMPACTS AS WELL AS ENVIRONMENTAL IMPACTS AT SACRED SPRINGS ON AND NEAR BLACK MESA. SIMILARLY, OSM DOES NOT LOOK AT HOW THE MINE'S 200 IMPOUNDMENTS AFFECT THE FLOW OF SURFACE WATER TO SACRED CORN GROWN BY THE HOPI FARMERS OF MOENKOPI AT THE FOOT OF BLACK MESA.

OSM'S ANALYSIS OF ENVIRONMENTAL AND CULTURAL IMPACTS OF THE BLACK MESA MINE IS SERIOUSLY FLAWED ON A MORE TECHNICAL LEVEL AS WELL. OSM NOW CONCEDES THAT THE USGS GROUNDWATER MODEL IT HAD USED FOR YEARS IS INACCURATE. THE USGS MODEL PROVIDES NO BASIS TO RATIONALLY ASSESS THE IMPACT OF DRAWING 4 BILLION GALLONS OF WATER EACH YEAR FROM THE NAVAJO AQUIFER.

EVEN IN THE FACE OF THIS SHORTCOMING IN WESTERN SCIENCE, OSM HAS DISREGARDED HOPI SCIENCE. HOPI SCIENCE LOOKS AT THE WAY PEOPLE ARE

CONNECTED TO THE LAND AND WATER. PRACTITIONERS OF HOPI SCIENCE SEE THE SACRED SPRINGS AS PASSAGE WAYS TO THE WATER WORLD, FROM WHICH HUMAN BEINGS CAME AND EVENTUALLY RETURN. THE SPRINGS ARE BREATHING HOLES; WHEN THEY STOP BREATHING, THE WATER STOPS FLOWING. FOR YEARS, PRACTITIONERS OF HOPI SCIENCE HAVE BEEN SAYING WHAT HARD DATA NOW SHOW: LARGE SCALE WITHDRAWALS HAVE SERIOUSLY DAMAGED THE NAVAJO AQUIFER. OSM'S CRITERIA, KNOWN AS "CUMULATIVE HYDROGEOLOGIC IMPACT ASSESSMENT" OR "CHIA" CRITERIA, SHOW SERIOUS DAMAGE TO THE AQUIFER: SPRINGS PRODUCE FAR LESS WATER; MONITORING WELLS SHOW SIGNIFICANTLY LOWER WATER LEVELS. AND, WASHES THAT USED TO RUN FULL MUCH OF THE YEAR ARE NOW OFTEN DRY AS A BONE.

DESPITE EVIDENCE OF SERIOUS DAMAGE AS SHOWN BY OSM'S OWN "CHIA" CRITERIA, THE AGENCY HAS TAKEN NO ACTION TOWARD RESTORING THE N-AQUIFER TO HEALTH. OSM'S REGULATIONS REQUIRE A MINE APPLICANT TO SUBMIT A RECLAMATION PLAN, YET OSM HAS NEVER REQUIRED PEABODY TO SUBMIT A RECLAMATION PLAN FOR THE N-AQUIFER AS PART OF ITS MINE APPLICATION. THE AGENCY HAS OFFERED NO EXPLANATION FOR ITS FAILURE TO TAKE ANY ACTION TO PROTECT AND RESTORE THE N-AQUIFER.

JUST AS TROUBLING AS OSM'S FAILURE TO FULLY AND FAIRLY ASSESS THE CULTURAL AND ENVIRONMENTAL IMPACTS OF THE BLACK MESA MINE IS THE AGENCY'S FAILURE TO INCLUDE INDIAN PEOPLE IN A MEANINGFUL DISCUSSION OF THOSE IMPACTS AS *INDIAN PEOPLE* WOULD SEE THEM. THE PUBLIC NOTICES OF PEABODY'S MINE APPLICATION, FOR EXAMPLE, DESCRIBE THE LOCATION OF THE MINE WITH TERMS SUCH AS "TOWNSHIP, RANGE AND SECTIONS", WHICH ARE MEANINGLESS TO MOST HOPI AND NAVAJO PEOPLE. THE APPLICATION ITSELF CONTAINS MORE THAN 1,000 PAGES, MUCH OF IT IN HIGHLY TECHNICAL JARGON. THE APPLICATION WAS DEPOSITED AT TWO LOCATIONS ON BLACK MESA, TWO HOURS OR MORE BY CAR FROM SOME OF THE VILLAGES (ASSUMING EVERY PERSON LIVING ON BLACK MESA WOULD HAVE ACCESS TO AN AUTOMOBILE). THE APPLICATION HAS NEVER BEEN SUMMARIZED OR TRANSLATED INTO THE HOPI LANGUAGE DESPITE AN EXECUTIVE ORDER (13166, 65 Fed. Reg. 50121 (August 16, 2000) REQUIRING AGENCIES TO TAKE STEPS TO ENSURE THAT PERSONS WITH LIMITED ENGLISH PROFICIENCY CAN MEANINGFULLY ACCESS THE AGENCY'S PROGRAMS AND ACTIVITIES.

OSM DID NOT DENY ITS OBLIGATION TO TRY TO REACH OUT TO INDIAN COMMUNITIES. INSTEAD, THE REASON IT OFFERED FOR NOT TRANSLATING PUBLIC

NOTICES AND OTHER VITAL DOCUMENTS RELATING PEABODY'S APPLICATION "IS THAT HOPI IS NOT A YET A WRITTEN LANGUAGE". See Letter of March 6, 2002, from OSM to Vernon Masayesva. THIS RESPONSE IS ASTONISHING GIVEN THE FACT THAT HOPI HAS BEEN WRITTEN SINCE THE 1850s, AND A NUMBER OF BOOKS HAVE BEEN WRITTEN IN HOPI, INCLUDING A HOPI-ENGLISH DICTIONARY.

MORE RECENTLY, ON JUNE 19, 2002, OSM WROTE TO ME SAYING THAT THE AGENCY HAD DECIDED TO CALL OFF PUBLIC HEARINGS ON PEABODY'S MINE APPLICATION. WEEKS AGO OSM HAD AGREED TO HOLD FIVE SUCH HEARINGS LATER THIS SUMMER. THE REASON OSM GAVE FOR CALLING OFF THE HEARINGS WAS THAT ON MAY 14 PEABODY HAD SUBMITTED A LETTER CLAIMING TO HAVE "IDENTIFIED" AN ALTERNATIVE SOURCE OF WATER FOR THE COAL SLURRY, AND REQUESTING THAT THE PUBLIC HEARINGS BE PUT OFF. (BOTH LETTERS ARE INCLUDED IN THE MATERIALS PROVIDED TO MEMBERS OF THE COMMITTEE.) NO INFORMATION IS PROVIDED IN EITHER OSM'S LETTER OR PEABODY'S ONE AND ONE HALF PAGE LETTER SHOWING THAT SUCH AN ALTERNATIVE SOURCE WAS EVEN FEASIBLE AND COST EFFECTIVE. IN FACT, AN APPLICATION SUBMITTED TO THE CALIFORNIA PUBLIC UTILITY COMMISSION BY SOUTHERN CALIFORNIA EDISON, WHICH OPERATES A POWER PLANT USING COAL FROM THE BLACK MESA MINE, STATES THAT "THE FEASIBILITY AND COST OF THE ALTERNATIVE IS STILL BEING INVESTIGATED". MOREOVER, THE CULTURAL AND ENVIRONMENTAL CONCERNS OF INDIAN PEOPLE LIVING ON AND NEAR BLACK MESA EXTEND BEYOND THE N-AQUIFER. NEVERTHELESS, OSM DECIDED TO RENEGE ON ITS COMMITMENT TO HOLD PUBLIC HEARINGS WITHOUT CONSULTING THE INDIAN PEOPLE OF BLACK MESA.

BLACK MESA TRUST RESPONDED TO OSM ON JULY 6. WE HAVE DEMANDED THAT THE PUBLIC HEARINGS MOVE FORWARD. TO DATE, WE HAVE RECEIVED NO RESPONSE FROM OSM. (INCIDENTALLY, WE ALSO HAVE RECEIVED NO RESPONSE TO A FREEDOM OF INFORMATION ACT REQUEST WE SUBMITTED TO OSM MONTHS AGO FOR ALL COMMUNICATIONS BETWEEN PEABODY AND OSM FOR THE PRECEDING YEAR.) AS THINGS STAND NOW, THE PEOPLE MOST EFFECTED BY THE BLACK MESA MINE HAVE BEEN SHUT OUT OF THE PUBLIC PARTICIPATION PROCESS.

IN CONCLUSION, I LEAVE YOU WITH THE SAME QUESTION MY FRIEND, LEONARD SELESTEWA, LEFT YOU WITH ON JUNE 4: WHY? WHY HAS THERE BEEN A FAILURE OF TRUST RESPONSIBILITY? WHY IN MORE THAN TEN YEARS HAS THERE NOT BEEN A COMPREHENSIVE AND FAIR ASSESSMENT OF THE CULTURAL AND ENVIRONMENTAL IMPACTS OF THE BLACK MESA MINE? WHY HAS OSM BEEN MORE RESPONSIVE TO A COMPANY IT IS SUPPOSED TO BE REGULATING THAN TO

THE PEOPLE WHOM IT IS OBLIGATED TO PROTECT?

**WE ASK THIS COMMITTEE FOR HELP IN GETTING ANSWERS TO THESE
QUESTIONS AND IN GETTING OSM TO LISTEN TO AND COMMUNICATE WITH THE
INDIAN PEOPLE OF BLACK MESA.**